Mr. President.—The question is that clause 1 do stand part of the Bill.

Short title and commencement.

1. This Regulation may be called the Cochin Village Panchayat (Amendment) Regulation of 111 and it shall come into force at once.

Clause put and carried.

Mr. President.—The question is that the Title and the Preamble do stand part of the Bill.

THE COCHIN VILLAGE PANCHAYAT REGULATION AMENDMENT BILL.

Preamble.

Whereas it is expedient further to amend the Cochin Village Panchayat Regulation, V of 1089, as amended up-to-date; it is hereby enacted as follows:—

Title and preamble put and carried.

Mr. Thomas Manjuran.—I move that the Bill may be taken up and finally passed tomorrow.

Mr. M. P. Cherian.—I second it.

Motion put and carried.

The Cochin Contempt of Courts Bill.

Mr. Thomas Manjuran.—Sir, I beg to present the Select Committee Report on the Cochin Contempt of Courts Bill and pray that the Bill as reported by the Select Committee may be taken up for consideration.

In this connection I wish to make a short statement. The law of Contempt of Courts such as it exists today has been found to be rather inadequate. While there exists provision for dealing with such offences done in the immediate presence of the Court there does not exist any provision, as in British India and elsewhere, by which Courts can deal with contempt of court committed beyond their presence. This jurisdiction has been exercised by British Indian High Courts from the time of their institution. This in fact is exercised by the King's Bench Division from time immemorial. With regard to some Chief Courts in British India it was doubted in practice whether such jurisdiction existed. So the Government of India had to pass what is called the Contempt of Courts Act of 1926 with the result

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that all British Indian High Courts and Chief Courts have now the jurisdiction of dealing with such contempt of court cases even though the offence was not committed in the immediate presence of the Chief Court or High Court concerned. In Cochin the matter came up recently in connection with a certain application. Certain well-wishers of the accused chose while the bail application was pending to pass resolutions and to forward those resolutions to the Chief Judge insisting on the immediate release of the accused who was being tried and even making certain observations with regard to the case itself. It is perhaps well known to Hon'ble Members that during the pendency of trials misguided persons take into their heads to write to Judges anonymous or pseudonymous letters making comments on such cases. Such conduct is not conducive to the proper administration of justice and hence the idea of the Government is to bring the law into line with the law obtaining in British India. It is not simply to bring the law into line with that in British India but because the absolute necessity to do so is obvious. If the administration of justice were to be interfered with in the manner that was referred to by making comments either on the case or the parties concerned it is obvious that the administration of justice would become wellnigh impossible. I shall in this connection bring to the notice of the House the practice that exists in England. I shall read a few lines from Halsbury Vol. VII, pages 284-286.

"The issuing of attachments by the supreme courts of justice for contempts out of court is founded upon the same immemorial usage as supports the whole fabric of the common law.

Contempt by speech or writing may be by scandalising the court itself, or by abusing parties to actions, or by prejudicing mankind in favour of or against a party before the cause is heard. Any act done or writing published which is calculated to bring a court or a judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the court, is a contempt of court."

Then again,

"Every private communication to a judge for the purpose of influencing his decision upon a pending matter, and whether or not accompanied by the offer of a bribe or by personal abuse, is a contempt of court as tending to interfere with the course of justice.

Speeches or writings misrepresenting the proceedings of the court or prejudicing the public for or against a party are contempts....."

Lower down,

"It is a contempt to publish an article in a newspaper commenting on the proceedings in a pending criminal prosecution or civil action. In

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such cases the mischievous tendency of a trial by the newspapers when a trial by one of the regular tribunals of the country is going on is to be considered. On the other hand, the summary jurisdiction ought only to be exercised when it is probable that the publication will substantially interfere with a fair trial."

Now taking these matters into consideration, this Bill was drawn up incorporating the most salient principles contained in the English Law. Hon'ble Members will find that rather than giving an exhaustive list of cases of contempt, the method adopted was to give examples. That occurs in paragraph 2. "The following are instance of contempts of court for purposes of this Regulation. (a) Any act done or writing published which is calculated to bring a court or a Judge into contempt, or to lower his authority or to interfere with the due course of justice. (b) Every private communication to a judicial officer for the purpose of influencing his decision upon a pending action, and whether or not accompanied by the offer of a bribe or by personal abuse. (c) Speeches or writing misrepresenting the proceedings of the court or prejudicing the public for or against a party in a pending action, and (d) the publication of articles in newspapers commenting on the proceedings in a pending action". Now Hon'ble Members will agree, I am sure, in thinking with me that these provisions are absolutely necessary. I do not propose to make any further observations on this matter.

Mr. A. Eachara Menon.—Sir, I oppose this motion. The position obtaining in British India are not the same in Cochin State. Here our Judges are considered to be all-knowable and all-knowing. Any remark made by any person may be construed as lowering their dignity. Suppose I say that one of the Judges made a grammatical error. They may think that they have gone down in the estimation at least of the school going population. The Judges of the Chief Court can summon me and punish me. This state of affairs is undesirable because there is no appeal here from the judgment of the Chief Court. The Law Member had been pleased to refer to English Law. Very lately there was an editorial in the Hindu on this subject. True, they point out that the liberty of the press, in this respect, is "no more than the liberty of any member of the public". But it is equally true that that liberty exists and its scope and extent was described by Lord Russel of Kollowen in Reg. v. Gray in these words: 'Judges and courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat that as contempt of Court'. In the present case, the Judicial Committee have declared that 'whether the authority and

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position of an individual Judge, or the due administration of Justice, was concerned, no wrong was committed by any member of the public who exercised the ordinary right of criticism in good faith, in private or public, of the public act done in the seat of justice'. 'The path of criticism', they observed, 'was a public way: the wrong-headed were permitted to err therein'. Provided the critics attribute no improper motives to those taking part in the administration of justice, and did not act in malice or attempt to impair the administration of justice, they were immune, even if they were mistaken in their views; for as their Lordships pertinently asked, 'if criticism of decisions could only safely be made by persons who accurately know the law, who would be protected"? It is hoped that this emphatic pronouncement by the highest tribunal in the Empire will put an effective check to the tendency we have already referred to of courts in this country to resent criticism. It is necessary that not only Judges but all who occupy quasi-judicial positions of authority should keep in mind Lord Atkin's memorable words "Justice is not a cloistered virtue. She must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men". Is not some sort of sanction necessary? The only check now prevalent is the criticism of the public. If that is taken away I don't know where we are.

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മിസ്റ്റർ ടി. കെ. നായർ.— സർ, എനിക്ക് നിയമത്തിന്റെ പരിചയം ഇല്ലാത്തതുകൊണ്ടു ചോദിക്കുകയാണ്. (A) Any act done or writing published which is calculated to bring a court or a Judge into contempt, or to lower his authority, or to interfere with the due course of justice എന്നാണ്. ഒരുദാഹരണം പറയാം. അടുത്ത അവസരത്തിൽ ഒരു സെഡിഷൻ കേസിന് ഒരു ജഡ്ജിതന്നെ രണ്ടുവിധത്തിൽ വിധി പറയുക ഉണ്ടായി. വെസ്റ്റ് കോസ്റ്റ് റിവ്യൂ പത്രാധിപക്ക് ര കൊല്ലത്തെ ശിക്ഷ വിധിച്ചതായി കണ്ടു. ആ ജഡ്ജിതന്നെ രക്തലേഖക്കേസിന് ഫ കൊല്ലത്തെ ശിക്ഷയും വിധിക്കുകയുണ്ടായി.

Mr. M. Sivarama Menon.— The judgment of the West Coast Review case is subject to appeal and therefore it is subjudice. No comparison can be made between the two judgments.

മിസ്റ്റർ ടി. കെ. നായർ — അതു അല്ലെങ്കിൽ വേറെ ഏതെങ്കിലും ഒരു കേസിനെപ്പറ്റി രണ്ടുതരത്തിൽ ഉള്ള വിധി പറഞ്ഞതായി ജനങ്ങൾക്കും ബോദ്ധ്യം വരുന്നു. ഇതു വലിയ കുറ്റത്തിന് ന്യ മാസത്തെ ശിക്ഷയും ഇതു ചെറിയ കുറ്റത്തിന് വ കൊല്ലത്തെ ശിക്ഷയും വിധിച്ചു എന്നു പറയുമ്പോൾ ആ പാപത്തിന്റെ ഉള്ളിൽ എന്തെല്ലാ

മോ ചില അത്ഥങ്ങൾ ഒളിഞ്ഞുകിടക്കുന്നുണ്ടെന്ന് മാത്രമേ എനിക്കു പറയുവാനുള്ളൂ.

മിസ്റ്റർ തോമസ് മാഞ്ഞൂരാൻ.— വാചകത്തിൽ എന്തെല്ലാമോ ഒക്കെ ഉണ്ടെന്നും മറും പറഞ്ഞു നേരം കളയാൻ കൊള്ളാം. വാചകങ്ങൾക്ക് എന്തെങ്കിലുമൊക്കെ അത്ഥം ഉണ്ടാകും. അതു ശരിയാണ്.

മിസ്റ്റർ ടി. കെ. നായർ.— അപ്പോൾ വാചകങ്ങളുടെ അത്ഥം ഡിക്ഷനറി നോക്കി മനസ്സിലാക്കണം. ഞങ്ങൾ പറയുന്നതിന്റെ അത്ഥം വേറെ രൊരാൾ തീർച്ചയാക്കണം. ഇതിന്റെ അത്ഥം എന്താണെന്ന് ഞാൻ പ്പെയിനായിട്ടാണ് ചോദിച്ചത്.

Mr. President.—Every law that is passed by the Legislature has to be interpreted by the Courts.

മിസ്റ്റർ ടി. കെ. നായർ— ഞാൻ അതു് ഇതിൽ പെടുമോ എന്നാണ് ചോദിച്ചത്. ഞാൻ ഒരു instance പറഞ്ഞല്ലൊ.

Mr. President.—If it is in the terms in which the Hon'ble Member put it, I don't think any Court will have the courage to take action against him.

മിസ്റ്റർ എം. ശിവരാമമേനോൻ.— ഒരു കേസിന്റെ ജഡ്ജ്മെന്റു കഴിഞ്ഞതിന്റെശേഷം ആ വിധിയെപ്പറ്റി എന്തെങ്കിലും അഭിപ്രായം പറയുന്നതിന് വിരോധം ഇല്ല. ഇതു കുറെ കഠിനമായിപ്പോയി, അതു കുറെ കുറഞ്ഞുപോയി എന്നുംമറും ഇവിടേയോ ബ്രീട്ടീഷ് ഇൻഡ്യയിലൊ മറെറവിടെ ഉള്ളതിനെ കുറിച്ചോ ആയാലും വിരോധം ഇല്ല. പക്ഷെ അങ്ങിനെ പറയുന്ന പക്ഷത്തിൽ, അതു് എന്തെങ്കിലും ഉദ്ദേശംവെച്ചാണ്, എന്നും മറും പറഞ്ഞാൽ അതു കുറകരമാകും. കോടതിയിലെ വാചകങ്ങളുടെ അത്ഥം തെറിദ്ധരിക്കുക സാധാരണ പതിവാണ്.

മിസ്റ്റർ ടി. കെ. നായർ.— ഞാൻ പറഞ്ഞതു് ആദ്യത്തേതിലും രണ്ടാമത്തേതിലും ഇങ്ങിനെ വ്യത്യാസം വന്നതിൽനിന്ന് അതിൽ എന്തൊ ഒരത്ഥംവെച്ചു് ചെയ്തതാണെന്ന് തോന്നുന്നില്ലെ എന്നാണ്?

മിസ്റ്റർ എം. ശിവരാമമേനോൻ.— ഏതെങ്കിലും ഒരു രാജ്യത്തിൽ ഒരു ജഡ്ജി ഇത്തരത്തിൽ ഒരു വിധി പ്രസ്താവിച്ചതായി എനിക്ക അറിവില്ല.

മിസ്റ്റർ കെ. അയ്യപ്പൻ.— Contempt of Courts Bill പലവിധത്തിൽ പറയുന്നുണ്ട്. Fair Comments of Editors ന് ഇതു് ബാധകമാകയില്ല എന്നൊരു വാചകം ചേക്കാതെ ഇരിക്കാൻ കാരണം എന്താണെന്നാണ്?

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Mr. Thomas Manjuran.—The jurisdiction here is in the Chief Court.

മിസ്റ്റർ കെ. അയ്യപ്പൻ.—ഇതിന്ന് എന്തെങ്കിലും ഒരു പ്രൊവിഷൻകൊണ്ടു Fair Comment എങ്കിലും അനുവദിച്ചിട്ടുണ്ടെങ്കിൽ ഇതു് ശരിയാണെന്നു വിചാരിയ്ക്കാമായിരുന്നു.

Mr. Thomas Manjuran.—There are two ideas underlying this amendment. One is, no document should be made so as to prejudice a pending action. That is one point. The Hon'ble Member may also know that there is no law now existing to punish that sort of contempt. The next question is, why not we give latitude to fair comment? Now latitude in regard to other matters for fair comment and latitude with regard to courts and judges are slightly different. With regard to free discussion of a controversial matter it has been recognised all along that a very great latitude is possible even including personalities. If we allow that amount of latitude of fair comment with regard to judicial officers it would be impossible to maintain the prestige or dignity of judicial officers. No civilised country recognises such a thing.

മിസ്റ്റർ കെ. അയ്യപ്പൻ.— ഞാൻ ചോദിച്ചതു ഗവൺമെണ്ടിനു മനസ്സിലായിരുന്നെങ്കിൽ ഈ fair comment എന്നതു ചേർക്കാത്തതിലുള്ള കാരണം പറയുവാനായിരുന്നു.

Mr. Thomas Manjuran.—Fair comment with regard to judicial matters is strictly limited by customary limitations.

Mr. President.—What is the objection in saying that any fair and bonafide comment upon the action of a court will not be punishable under this Bill? Every word in the English language used in a statute has necessarily to be interpreted by a court as to its primary recognised meaning and in very many cases words are specially construed in a special manner by the court either by recognised usage or custom. Suppose you add "provided fair and bonafide comment will not be punishable under this law", will not this fair and bonafide comment be construed by a court in a fair and proper manner?

Mr. Thomas Manjuran.—I am not prepared to concede the necessity for it. But if the Hon'ble Members would put forward an amendment to that effect it may be considered. I can only say that this Bill is drafted strictly on the lines of the English law which has been crystallised during the course of many centuries.

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Mr. President.—Hon'ble Members who are interested may put forward agreed amendments with the Law Member and the Bill may be taken for consideration again tomorrow.

Mr. A. Sankara Menon.—Sir, I do not think any amendment is necessary. If such an amendment is introduced it will not apply to all clauses. The last clause is 'the publication of articles in newspapers commenting on the proceedings in a pending action'. It cannot apply to that. It is unnecessary to introduce any amendment in this Regulation as it stands.

Mr. President.—They do not want any exemption in favour of any criticism of a case which is sub-judice. Their point is that fair and bonafide criticism of the action of the court after the matter has ceased to be sub-judice shall not be punished. You can make that clear in the amendment.

Mr. C. R. Iyyunni.—I would like to know an instance where the lowering of the authority of the court is made without bringing the court into contempt or interfering with the due course of justice. There are three things mentioned here. One is, any act done or writing published which is calculated to bring a Court or a Judge into contempt, another is, to lower his authority and the third is, to interfere with the due course of justice. I want to know an instance as to how the authority of the court will be lowered.

Mr. M. Sivarama Menon.—Suppose a man says that a gentleman is not fit to be a judge. That will lower his authority as a Judge. I think the amendment that is proposed to be incorporated is perfectly harmless. There are a series of decisions on the point as to what constitutes 'contempt of Court'. The amendment will not override this Judge-made-Law.

Mr. President.—As a matter of fact the law relating to contempt of courts is a very old law and it is well understood in its practical application. Even now the law of contempt of court is in existence in Cochin State. There is only a question of doubt whether the court has got jurisdiction to summon and punish a man for contempt of court not committed in its own presence. It is only a question of doubt. It is only to make the point clear and settled that this provision is introduced. So far as the actual meaning of the word contempt of court is concerned, I do not think it is necessary to attempt to define it because it is a very well known word. If the court tries to abuse it, it will cease to be a court of law.

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Mr. E. Ikkanda Warriar.—Section 2 without the explanation will be sufficient. It is the series of explanations, that gives the difficulty.

Mr. President.— The Bill will be taken up tomorrow. Before the House adjourns, I want to announce that the election of the three non-official members to the Standing Finance Committee by the non-official Members of this House will be held on Friday, 27—3—1936 at 5 p. m. Hon'ble Members are requested to hand over their nomination papers to the Secretary to the Council before 5 p.m. on 26—3—1936.

The House stands adjourned to half past two.

The House rose for lunch at 1-10 p. m. and re-assembled at 2-30 p. m. with the Deputy President (M. R. Ry. A. Sankara Menon Avl., B. A. & B. L.) in the Chair.

Resolutions (Contd.)
33. Provision for the improvement of Poramboke tanks.

Mr. T. K. Nayar.—*"This Council recommends to the Government to allot annually a decent sum for improving the existing poramboke tanks".*

* സർ, കുറച്ചുകാലമായി ഉൾനാടുകളിൽ കാലവർഷം ശരിയായിട്ടില്ലാത്തതുകൊണ്ട് കൃഷിക്ക് ഉണക്കുപിടിച്ചു പലേ അവസരത്തിലും നികുതി വിട്ടുകിട്ടണമെന്ന ഗവൺമെൻറിനോട് ആവലാതിപ്പെട്ടും, പലേ അവസരത്തിലും അവരുടെ രക്ഷയ്ക്കായിട്ട് ഗവൺമെൻറ് നികുതി വിട്ടുകൊടുത്തും മറും പ്രവൃത്തിച്ചു വരുന്ന സംഗതി ഗവൺമെൻറിന് ഇപ്പോൾ ഓർമ്മയുള്ളതാണ്. ഇതിനു ചില നിവാരണങ്ങളെല്ലാം ഗവൺമെൻറിൽനിന്ന് കണ്ടുവച്ചിട്ടുണ്ടെന്നും, അതിലേക്ക് ഓരോ വില്ലേജിലുമുള്ള പുറമ്പോക്ക് കുളങ്ങളുടെ സ്ഥിതിഗതികളെപ്പറ്റിയും മറും റിപ്പോർട്ട് ചെയ്യുന്നതിന്ന് വില്ലേജ് ഉദ്യോഗസ്ഥന്ന് കല്പനകൊടുത്തിട്ടുണ്ടെന്നും ഒരവസരത്തിൽ ദിവാൻപേഷ്കാർ അവർകൾ ഈ നിയമസഭയിൽ പറഞ്ഞിട്ടുണ്ടായിരുന്നു.

ഉൾനാടുകളിലെ കൃഷിരക്ഷയ്ക്കു വലുതായ ഇറിഗേഷൻ സ്കീം കൊണ്ടോ മറേറാ രക്ഷകിട്ടുവാൻ അടുത്ത അവസരത്തിൽ സാധിക്കാത്ത സ്ഥിതിക്ക്, വളരെക്കാലമായി ഈവക പുറമ്പോക്ക് കുളങ്ങളെക്കൊണ്ട് ജലക്ഷാമം തീർത്തുവന്നിരുന്നതുപോലെ ഇപ്പോഴും അതിനെ വേണ്ടവിധം സംരക്ഷിച്ചുപോരുന്നപക്ഷം മേലിൽ ഇത്ര കലശലായി ഉണക്കം ബാധിക്കാതെ കഴിക്കാമെന്ന ഞങ്ങൾക്കഭിപ്രായമുള്ളതുകൊ

* Speech not corrected by the Hon'ble Member.

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